IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 55 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURENDRA PEMRAJ KANKARIA

Appearance:

MR M.S.RAO, APP for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/08/2003

ORAL JUDGEMENT

1. This appeal has been preferred by the State of Gujarat for enhancement of the sentence awarded by the

learned Judicial Magistrate First Class, Kalol to the respondent for the offence of violating the provisions of Rule 61 of the Gujarat Factories Rules, 1963.

2. The respondent accused was alleged to have committed offence under the said Rules framed under Section 31(2) of the Factories Act, 1948, on an allegation that the pressure vessel was being used at the time of inspection of the factory on 27-9-1989 without getting it tested and without maintaining the test report in the prescribed form.

3. In the complaint made by the factories inspector, the only allegation was that, on 27-9-1989, the receiver / tank of the pressure vessel were being used by attaching a compressor without the vessel having been tested and without any test report being maintained in the prescribed Form 11. It was alleged that thereby the respondent had violated Rule 61 of the Factories Rules framed under Section 31(2) of the Factories Act, 1948 and thereby, committed an offence under Section 94 of the said Act. There was no allegation in the complaint that any earlier offence was committed by the respondent.

4. By note filed at exh.30 on behalf of the accused person, it appears that the accused admitted the offence stating that it was his first offence, and that the defect was removed. It was stated that the defect mentioned in the complaint had occurred due to oversight of the concerned employee, and that care would be taken that it is not repeated. The fact that this was the first offence committed by the respondent as mentioned in exh.30 was never disputed. The learned Judicial Magistrate First Class, by his order dated 18-11-1995, accepted the plea of guilt made by the accused as contained in exh.30 and held him guilty of the offence and imposed a fine of Rs.450=00, in default to undergo simple imprisonment for one month.

5. It will be seen that reference to Section 94 of the said Act in the complaint came to be reflected also in the order made by the learned Judicial Magistrate First Class, without it being noticed that Section 94 of the said Act applied only if any person who has been convicted of any offence punishable under Section 92 is again guilty of an offence involving a contravention of the same provision. Since there was admittedly no previous conviction in the present case, it appears that Section 94 is mentioned due to a typing error committed in the complaint, which is repeated in the order of the learned Judicial Magistrate. In cases where there is no

previous conviction, punishment of breach of any rules made under the Act is to be imposed under Section 92 of the said Act.

6. Having regard to the facts and circumstances of the case, it cannot be said that the punishment imposed by the learned Magistrate is so lenient as to warrant its enhancement at this distant point of time. It appears that the appeal has been filed by the State on the footing that the case fell under Section 94 of the said Act. When admittedly there was no previous conviction neither alleged nor pointed out at the time when the learned Magistrate made the order, there was no question of imposing enhanced punishment under Section 94 of the Act. The order of the learned Magistrate was, in reality, an order made under Section 92 of the Act, though it wrongly mentioned Section 94. In any event, there is no warrant for enhancing the punishment imposed on the respondent. The appeal is, therefore, dismissed.

[R.K.ABICHANDANI, J.]

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